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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

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NETBULA, LLC

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ADR

SBA

NETBULA, LLC., a Delaware limited liability
company,

Plaintiff,

v.

Greenwich Capital Markets, Inc. , a Delaware
corporation, and DOES 1-10, inclusive,

Defendants

Case No.

C06-07143

COMPLAINT FOR COMPENSATORY
DAMAGES, DISGORGEMENT OF
PROFITS, INJUNCTIVE RELIEF, AND
ATTORNEYS' FEES AND COSTS FOR:

Direct, Contributory, and Vicarious Copyright
Infringement Under 17 U.S.C. Section 101 *et*
seq.;

CERTIFICATION OF INTERESTED
PARTIES OR PERSONS

DEMAND FOR JURY TRIAL

COMPLAINT

Plaintiff NETBULA, LLC ("Netbula" or "Plaintiff") complains and alleges against Defendants
Greenwich Capital Markets, Inc., a Delaware Corporation, and DOES 1-10, inclusive, as follows:

INTRODUCTION

1. Plaintiff Netbula develops computer software products. The functionality of
Netbula's products depends upon uniquely-created and copyrighted software files (the

1 "pwrpc32.dll" file, the "pwrpc32.lib" file, the "powerrpc.h", the "rpcgen.exe" file, and other files).
2 Netbula offers licenses to software products that contain these all-important copyrighted files, in
3 exchange for the payment of royalties. Such royalties are the heart of Netbula's business revenues.
4 Defendants in this action have willfully infringed Netbula's copyrighted software technology by
5 obtaining said technology and including it in Defendants' own software products in such a way as
6 to exceed the scope of a license agreement and without paying Netbula the appropriate royalties.
7 All of these actions by Defendants amount to unlawful, unfair, and/or fraudulent business
8 practices. Defendants have profited from all of their unlawful actions to the great financial
9 detriment of Plaintiff Netbula.
10

11 JURISDICTION

12
13
14 2. This Court has subject matter jurisdiction over this matter pursuant to: (1)
15 28 U.S.C. §§ 1331 and 1338(a), as this action arises out of the laws of the United States of
16 America (in particular, the claim for copyright infringement founded upon the Copyright Act at 17
17 U.S.C. § 101 *et seq.*).
18

19 3. This Court has personal jurisdiction over Defendants in this action and
20 venue is proper in this judicial district under 28 U.S.C. § 1391(b) because, as alleged further
21 below: (a) Defendants, and each of them, have intentionally engaged in substantial business and
22 related communications within this forum amounting to sufficient minimum contacts, including,
23 but not limited to, the sale of their offending products and/or services into California and, on
24 information and belief, into this judicial district; (b) the harm caused to Plaintiff by the acts and
25 omissions of Defendants was targeted by Defendants at Plaintiff and designed to impact, and did
26 in fact impact, Plaintiff, which has its principal place of business located in this judicial district;
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1 and (c) a substantial part of the acts or omissions giving rise to the asserted claims occurred or had
2 effects in this judicial district.

3
4 **INTRADISTRICT ASSIGNMENT**

5
6 4. Because this action is an Intellectual Property Action as specified in
7 Northern District of California Civil L.R. 3-2(c), it is to be assigned on a district-wide basis.

8
9 **THE PARTIES**

10 5. Plaintiff NETBULA, LLC ("Netbula" or "Plaintiff"), is a Delaware limited
11 liability company with its principal place of business located at 2777 Alvarado Street, San
12 Leandro, CA, 94577, within this judicial district.

13
14 6. On information and belief, defendant Greenwich Capital Markets, Inc.
15 ("GCM") is a Delaware corporation doing business as "RBS Greenwich Capital" with its principal
16 place of business located at 600 Steamboat Road, Greenwich, Connecticut 06830. Defendant
17 "GCM" operates in the financial markets in North America. According to GCM's online literature,
18 "GCM" is one of the leading "fixed income firms" in North America.

19
20 7. Plaintiff does not know the true names and capacities, whether individual,
21 corporate, associate, or otherwise, of defendant DOES 1 through 10, inclusive. Plaintiff is
22 informed and believes, and based upon such information and belief alleges, that each fictitious
23 defendant was in some way responsible for, participated in, or contributed to the matters and
24 things of which Plaintiff complains herein, and in some fashion, has legal responsibility therefore.
25 Certain of defendant DOES 1 through 10 are affiliates, customers and/or potential customers of
26 the other named Defendants. When the exact nature and identity of such fictitious defendants and
27
28

1 their responsibility for participation and contribution to the matters and things herein alleged is
2 ascertained by Plaintiff, Plaintiff will amend this Complaint to set forth the same.

3
4 **FACTUAL DETAILS**

5 8. Plaintiff Netbula develops premium quality computer software products.
6 Particularly, Netbula is an industry leader in the development of innovations in "Remote
7 Procedure Call" ("RPC") technology. RPC technology allows a program on a local computer to
8 execute commands on a remote computer over a network. Netbula's main product line is its
9 "PowerRPC" echelon, which is available for use in both Microsoft Windows and UNIX operating
10 system environments.

11
12 9. Netbula's business is founded largely upon its sophisticated ability to create
13 new software products featuring advancements and solutions in RPC technology, and to license
14 those products for profit. Numerous Fortune 500® companies are Netbula customers who make
15 use of, and benefit from, Netbula's "PowerRPC" products in connection with critical financial,
16 healthcare, and telecommunications services.

17
18 10. Netbula advertises PowerRPC as the "most powerful ONC RPC
19 development tool that exists today" (ONC stands for "Open Network Computing") on its web site.
20 Besides PowerRPC for Microsoft Windows for the 32 bit x86 architecture, Netbula also develops
21 and markets PowerRPC for Windows CE and PocketPC for the ARM architecture, 64 bit
22 Windows for the AMD64 architecture, 32 bit and 64 bit Solaris OS for the SPARC, HP-UX,
23 Linux and many other operating systems and architectures. PowerRPC is for developing software
24 for C or C++ programming language. Netbula also develops and offers a different but
25 interoperable product, written in Java language called JavaRPC. Netbula thus offers a complete
26 spectrum of interoperable RPC solutions for different operating systems and architectures.

1 11. Netbula holds a federal copyright registration for its main product,
2 "PowerRPC" (Registration No. TX 6-211-063, registered October 18, 2005), a copy of which is
3 attached hereto as Exhibit A. "PowerRPC" contains the key "pwrpc32.dll" file developed by
4 Netbula.

5
6 12. Netbula's RPC software product for Microsoft Windows contains two parts:
7 (1) the "Software Development Kit" ("SDK") that consists of the software tools which allow
8 programmers to create applications based on Netbula RPC technology, for which the
9 "powerrpc.h", "pwrpc32.lib", "pwrpc32.dll", "powerrpc.exe" and "rpcgen.exe" files are the most
10 important; and (2) the "Runtime Library" that consists of files providing the core RPC
11 functionality, for which the "pwrpc32.dll" file is most important. The pwrpc32.dll is a binary file
12 that contains the computer instructions for Netbula's RPC technology. The "pwrpc" in
13 "pwrpc32.dll" is an abbreviation of "PowerRPC", and the 32 indicate that it's for 32 bit computers
14 (for 64 bit computers, the filename is "pwrpc64.dll"). The "pwrpc32.dll" file is a unique and
15 original copyrighted creation of Netbula, and without the "pwrpc32.dll" file, Netbula RPC
16 applications cannot run. The "pwrpc32.dll" file is therefore a closely-guarded intellectual property
17 right of Netbula.

18
19 13. To develop a program using Netbula RPC ("a Netbula RPC program"), a
20 programmer first writes a functional description file conforming to an interface description
21 language ("IDL"), this description file specifies the commands the RPC program will provide and
22 use. Then the programmer uses a program called an IDL compiler to translate the description into
23 programming source code. To build the Netbula RPC program, a programmer incorporates the
24 source code generated by the "Netbula powerrpc" or "Netbula rpcgen" IDL compiler, the
25 "powerrpc.h" file and other source code files to create object code with a C or C++ compiler, such
26 as the Microsoft Visual C++ compiler or Borland C++ Builder. The object code is then linked
27 with Netbula's "pwrpc32.lib" file to create an executable Netbula RPC program.

1 14. When the Netbula RPC application runs, it copies the entire "pwrpc32.dll"
2 file into computer random access memory and inserts the entire "pwrpc32.dll" file into the
3 program's own memory space. Afterwards, the entire "pwrpc32.dll" file becomes part of the
4 program and the program can execute instructions in "pwrpc32.dll" for essential Netbula RPC
5 functionalities. If the "pwrpc32.dll" file cannot be found, the Netbula RPC program will report an
6 error and abort its execution.

7
8 15. A Netbula product purchaser must buy one type of license (an "SDK"
9 license) for each computer programmer who will use the "powerrpc.h", "rpcgen.exe",
10 "pwrpc32.dll" and other PowerRPC files to develop RPC applications. A Netbula product
11 purchaser must also buy a separate license for the right to copy Netbula's Runtime Library files,
12 also including the all-important "pwrpc32.dll" file. The license for the right to copy the Runtime
13 Library to a single computer is called a "runtime license." Each SDK license and runtime license
14 is only granted for a single computer and might only be granted for use in one specific operating
15 system environment, such as Windows NT but not Windows 2000, depending upon the specific
16 agreement between Netbula and the licensee.

17
18 16. Netbula collects a royalty for each copy of its SDK license and each copy of
19 its runtime license. Both the SDK and runtime licenses include the right to use Netbula's key
20 "pwrpc32.dll" file. Netbula's business and profitability depend largely upon the royalties it
21 receives from licensing copies of its RPC software technologies that make use of the all-important
22 "pwrpc32.dll" file. Netbula's licenses are not transferable.

23
24 17. In early October of 2006, while searching internet newsgroups, Netbula
25 found a person with the initial "R.B" posted messages about a program which seemed to have
26 included Netbula's "pwrpc32.dll". The messages posted by "RB" indicated that the
27 "pwrpc32.dll" file was used on a web server running Windows 2003. The message also
28

1 indicated that the web server had four microprocessors (a typical desktop PC has only one
2 processor). Using the information from the posting, and after further investigation, Netbula
3 identified this person as a programmer employed by Defendant GCM.

4
5 18. In June 2001, GCM purchased one (1) SDK license for Netbula RPC for
6 Windows NT. This license gave the right for one GCM developer to develop Netbula RPC
7 applications on one computer running Microsoft Windows NT operating system. This license
8 did not include any runtime licenses for GCM to copy the "pwrpc32.dll" file into production
9 computers.

10
11 19. In the license agreement sent along with the Netbula RPC SDK, it was
12 clearly stated that the software was for "Windows NT and 95/98 platforms" and "each user can
13 only use the software on one computer. You have the right to make additional copies of the SDK
14 Product solely for backup use." At the top of the agreement were the following three lines of text,
15 which clearly indicate that GCM did not have a runtime license:

16 Licensee: Greenwich Capital Markets

17 ONC RPC Developer license : 1

18 ONC RPC Runtime license: 0
19

20 20. Based upon all of the information available, Netbula concluded that GCM
21 was using "pwrpc32.dll" on its Windows 2003 servers without a license. On October 16, 2006,
22 Netbula sent a letter to Ben Carpenter, Co-CEO of DEFENDANT GCM, notifying him of the
23 situation and requesting a usage report.

24
25 21. In response to Netbula's inquiry, GCM provided reports stating that it had
26 used Netbula RPC on twelve to fourteen Windows 2000 and Windows 2003 servers since 2001.
27 GCM also claimed that those Windows servers have only one or two CPUs. GCM further
28

1 claimed that only one developer with initials "A.G." had used the Netbula RPC product. The
2 GCM report failed to match the very limited information Netbula had obtained from the internet
3 posting.

4
5 22. Netbula asked GCM to describe how PowerRPC is being used and provide
6 estimated gross revenue derived from the related software. GCM's associate general counsel,
7 Robin Elkowitz, responded that PowerRPC "may be eliminated. Relationship to gross revenue is
8 none."

9
10 23. Subsequently, Netbula offered GCM two PowerRPC server runtime site
11 licenses for Windows 2000 and Windows 2003, which would allow GCM to legally use
12 "PowerRPC" within GCM. GCM declined the offer.

13
14 **CLAIM FOR RELIEF**

15
16 **COPYRIGHT INFRINGEMENT (DIRECT, CONTRIBUTORY, AND VICARIOUS) (17**

17 **U.S.C. § 101 et seq.)**

18
19 **(Against All Defendants) (For Damages and Profits, and Injunctive Relief)**

20 24. Plaintiff realleges and incorporates herein by reference the allegations of
21 paragraphs 1 through 23, inclusive, of this Complaint.

22
23 25. Plaintiff has complied in all respects with the Copyright Act, 17 U.S.C. §
24 101 et seq., and all other laws governing copyright, with respect to its RPC technology software
25 and products. The content, selection, coordination, and arrangement of the information in
26 Netbula's RPC technology and products have resulted in works which, in each individual instance,
27 and as a whole, constitute original works of authorship.

1 26. All of the original creations of content in Netbula's RPC technology
2 (including its "pwrpc32.dll" file) and the works making use of it (including Plaintiff's
3 "PowerRPC" products) constitute original works of authorship fixed in a tangible medium of
4 expression and are copyrightable under the Copyright Act. Plaintiff has obtained a federal
5 copyright registration for its Netbula "PowerRPC" software product (Registration No. TX 6-211-
6 063, registered October 18, 2005, attached as Exhibit A to this Complaint). Plaintiff also has
7 common law copyright rights in its original published works.

8
9 27. At all times relevant hereto, Plaintiff has been and still is the holder of the
10 exclusive rights under the Copyright Act to reproduce, adapt, perform, distribute, display, exhibit,
11 and license the reproduction, adaptation, performance, distribution, display, exhibition, and other
12 use of its RPC technology and products, including its "pwrpc32.dll" file.

13
14 28. Plaintiff has invested substantial time, effort, and monies in the creation and
15 public distribution of its RPC technology and products, based in part upon the opportunity to
16 recover its investment from its copyrighted content, and to obtain the revenues and business
17 advantages the copyrighted content provides in connection with Netbula's offering of computer
18 software programs and licenses to the public.

19
20 29. Plaintiff's RPC technology (including its SDK and runtime files) contains
21 the "pwrpc32.dll" file necessary to the functionality of Netbula RPC programs. Plaintiff's
22 "rpcgen.exe" file generates source code which is also copyrighted by Plaintiff. Defendants'
23 software contains copies of significant material portions of the content of Plaintiff's technology
24 and products, including Plaintiff's "pwrpc32.dll" file and the code generated by "rpcgen.exe".
25 Defendants have repeatedly copied or made use of Netbula's RPC technology containing its
26 important "pwrpc32.dll" file. Since the Defendant's software incorporates the source code
27
28

1 generated by Plaintiff's "rpcgen.exe" program and includes the "pwrpc32.dll" and "powerrpc.h"
2 files, it is a derivative work of Netbula's PowerRPC.

3
4 30. Defendants had access to the content of Plaintiff's RPC technology and
5 "pwrpc32.dll" file as alleged hereinabove and acquired possession of the content of said
6 technology by directly and/or substantially copying that information from products originating
7 from Netbula. Defendants then intentionally reproduced, displayed, adapted, exhibited, and/or
8 publicly distributed the content of Plaintiff's RPC technology and software products in Defendants'
9 software, exceeding the scope of licenses, or without Plaintiff's authorization or consent, or
10 license. Defendants' infringing acts include the following.

11
12 31. 1) Defendant GCM only purchased one Netbula RPC SDK license for one
13 developer on one computer. That license had been used by "A.G". However, multiple additional
14 GCM programmers have used the SDK product or its components;

15
16 32. 2) Defendant GCM only had a license to use Netbula RPC on one computer
17 running Windows NT, Windows 98 or Windows 95, but used Netbula RPC for Windows 2000
18 and Windows 2003 servers;

19
20 33. 3) Defendants only had license to create derivative works of Netbula RPC
21 under Windows NT, 98 and 95, but created derivative works of Netbula RPC for Windows 2000
22 and Windows 2003;

23
24 34. 4) Defendants did not purchase any runtime licenses to deploy
25 "pwrpc32.dll" onto its computers, but used the developer version of the "pwrpc32.dll" in
26 production. Such use of developer version in production environment is explicitly prohibited by
27 the license agreement.

1 35. By intentionally copying, reproducing, displaying, adapting, exhibiting,
2 and/or distributing the above-identified content of Plaintiff's RPC technology and products as
3 described hereinabove, Defendants have directly, contributorily, and/or vicariously infringed
4 Plaintiff's exclusive rights in its copyrighted works. By means of the unlawful conduct alleged
5 herein, Defendants have infringed, and will continue to infringe, Plaintiff's valuable copyrights in
6 the content of its RPC technology and products described herein.

7
8 36. On information and belief, Defendants have knowingly and systematically
9 participated in, facilitated, supported, materially contributed to, and/or encouraged the
10 unauthorized copying, reproducing, displaying, adapting, exhibiting, and/or public distributing of
11 Plaintiff's copyrighted RPC technology content and products, and each of the Defendants has
12 actual and constructive knowledge of the infringements committed by and through Defendants and
13 has had, and continues to have, the ability to control or halt such conduct at all relevant times, be it
14 conduct of the Defendants or of third parties. On further information and belief, Defendants have
15 each knowingly and systematically participated in, facilitated, supported, materially contributed
16 to, and/or encouraged the unauthorized copying, reproducing, displaying, adapting, exhibiting,
17 and/or public distributing of Plaintiff's copyrighted RPC technology content and products by each
18 other and by third parties, with actual and constructive knowledge of the infringements committed
19 by and through each other and the third parties. On further information and belief, at all relevant
20 times, Defendants had the right, ability, and opportunity to halt and/or control the unlawful
21 conduct of each of the other Defendants and third parties as alleged herein.

22
23 37. On information and belief, each of the Defendants is contributorily and
24 vicariously liable for the unlawful infringing conduct of each of the other Defendant through: (a)
25 their active participation in the infringing conduct of each other and of third parties; (b) their
26 assistance of and material contribution to each other and third parties in the infringing conduct; (c)
27 their supervision of and ability to control or halt the infringing conduct of each other and third
28

1 parties; and (d) the substantial, direct financial benefits that each of the Defendants has derived
2 and continues to derive from all of the aforesaid acts, all with full knowledge of their
3 unlawfulness.

4
5 38. Plaintiff is informed and believes, and on that basis alleges, that
6 Defendants' acts of infringements as alleged herein were committed knowingly, intentionally,
7 maliciously, willfully, and in reckless disregard of and indifference to the rights and property of
8 Plaintiff.

9
10 39. As a direct and proximate result of Defendants' unlawful acts as described
11 herein, Plaintiff has suffered and will continue to suffer injury to its business, goodwill, and
12 property. By means of the unauthorized conduct alleged herein, Defendants have deprived and
13 will continue to deprive Plaintiff of gains, revenues, royalties, business advantages, and/or the
14 opportunity to recover its investment in its RPC technology and products, both direct and indirect.
15 As such, Defendants have created and continue to create a disincentive for similar investments in
16 the arts. On information and belief, Defendants have also derived substantial financial benefit
17 from their unlawful conduct with respect to Plaintiff's copyrighted materials, as well as from the
18 unlawful and infringing conduct of each other and of third parties.

19
20 40. Each infringing act of copying, reproducing, displaying, adapting,
21 exhibiting, and/or distributing the content of Plaintiff's RPC technology (including Netbula's
22 "pwrpc32.dll" file), as well as the continuing threat of the same, constitutes a separate claim
23 against Defendants, and each of them, under the Copyright Act. Each post, copy, reproduction,
24 adaptation, exhibition, display, and/or distribution of Plaintiff's copyrighted materials on and
25 through Defendants' products, or by any other means, constitutes a separate and distinct act of
26 infringement, whether committed by individual Defendants or combinations of them, and
27 including acts of third parties for which Defendants are contributorily and/or vicariously liable.

1 Plaintiff has sustained, and will continue to sustain, substantial damage to the value of its business,
2 in that the activities of Defendants described in this Complaint have diminished and will continue
3 to diminish the gains, revenues, royalties, and business advantages which Plaintiff would
4 otherwise receive from the use of its copyrighted works. In addition, Defendants have realized
5 unlawful and unjust profits from the unauthorized and illegal copying, reproduction, adaptation,
6 exhibition, and/or displaying of the above-referenced content of Plaintiff's copyrighted works. As
7 a result of Defendants' acts of intentional direct, contributory, and/or vicarious infringement,
8 Plaintiff is without an adequate remedy at law, in that actual damages are difficult to ascertain.
9 Accordingly, Plaintiff requests that this Court grant the injunctive relief prayed for herein.

10
11 41. Plaintiff is entitled to recover from Defendants the damages, including
12 attorneys' fees, it has sustained and will sustain, and any gains, profits, and advantages obtained by
13 Defendants as a result of Defendants' acts of infringement alleged above, direct or indirect. At
14 present, the amount of such damages to Plaintiff and the gains, profits, and advantages Defendants
15 have obtained by reason of the unlawful conduct described herein cannot be fully ascertained by
16 Plaintiff, but are likely to exceed \$10,000,000.

17
18 42. Plaintiff has no adequate remedy at law. Unless Defendants are
19 preliminarily and permanently enjoined from committing the unlawful acts described herein,
20 Plaintiff will continue to suffer irreparable harm. Plaintiff's harm is irreparable because it is
21 extremely difficult to ascertain the amount of compensation which will afford Plaintiff adequate
22 relief if Defendants are not enjoined at this time, in part because of the nature of intellectual
23 property. Plaintiff is entitled, pursuant to 17 U.S.C. § 502, to injunctive relief in the form of a
24 temporary restraining order, a preliminary injunction, and/or a permanent injunction restraining
25 Defendants and all persons acting in concert with them, from engaging in any further such acts in
26 violation of the Copyright Act and from distributing Defendants' products which are the unlawful
27 fruits of their unlawful conduct.

1 **REQUEST FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY AND**
2 **PERMANENT INJUNCTION**

3
4 43. Plaintiff realleges and incorporates herein by reference the allegations of
5 paragraphs 1 through 42, inclusive, of this Complaint.

6
7 44. Netbula requests a temporary restraining order, a preliminary injunction and,
8 following a trial on the merits, a permanent injunction, pursuant to Federal Rules of Civil
9 Procedure 65, barring Defendants' continued use, copying and distributing of Netbula's software
10 exceeding the scope of license.

11
12 45. Pursuant to Civ. L.R. 65, Netbula's Application for a Temporary
13 Restraining Order and For a Preliminary Injunction is filed along with Complaint. Netbula
14 incorporates by reference the facts and arguments set in the Application, filed contemporaneously.

15
16 **PRAYER FOR RELIEF**

17
18 WHEREFORE, Plaintiff prays for judgment to be entered against Defendants as follows:

19
20 1. That Defendants be held liable for direct, contributory, and/or vicarious
21 infringement of Plaintiff's copyrights in violation of the federal Copyright Act, 17 U.S.C. § 501 *et*
22 *seq.*, as alleged herein;

23
24 2. That the Court find a substantial likelihood that Defendants will continue to
25 infringe, or contribute to or vicariously support the infringement of, Plaintiff's copyrights in the
26 content of Plaintiff's RPC technology and products, unless enjoined from doing so;

1 3. That Defendants and their officers, employees, agents, servants, attorneys,
2 and representatives, and all other persons, firms, or corporations in active concert or privity or in
3 participation with them, be preliminarily and thereafter permanently enjoined and restrained in the
4 form of a temporary restraining order, a preliminary injunction, and/or a permanent injunction,
5 pursuant to the Court's inherent equitable powers and pursuant to 15 U.S.C. § 1116, 17 U.S.C. §
6 502, from:

7
8 (a) directly or indirectly engaging in any manner in the unauthorized
9 copying, reproduction, adaptation, exhibition, distribution, display, or other
10 infringement of Plaintiff's protected works and/or exclusive copyright rights
11 (whether now in existence or hereafter created), including, without limitation, those
12 involving the original content of and works on and in Plaintiff's RPC technology
13 and products and from continuing to market, offer, sell, dispose of, license, lease,
14 transfer, display, advertise, reproduce, develop, or manufacture any works derived
15 or copied from the content of Plaintiff's copyrighted works, all as described in this
16 Complaint;

17
18 (b) causing, contributing to, enabling, facilitating, supporting, aiding, or
19 participating in any manner in the infringement of Plaintiff's protected works and/or
20 exclusive copyright rights (whether now in existence or hereafter created),
21 including, without limitation, the content of Plaintiff's RPC technology and
22 products, all as described in this Complaint; and

23
24 (c) otherwise engaging in any conduct that unlawfully, unfairly, and/or
25 fraudulently competes with Plaintiff and Plaintiff's RPC technology and products
26 (including, without limitation, through the unauthorized use and infringement of
27 Plaintiff's original works of authorship), all as described in this Complaint;
28

1 4. That Defendants and their officers, employees, agents, servants, attorneys,
2 and representatives, and all other persons, firms, or corporations in active concert or privity or in
3 participation with them, be ordered to immediately deliver to the Court for impoundment (and
4 destruction upon entry of final judgment against Defendants) all illegal, unlicensed copies of the
5 Netbula software in their possession, custody or control together with an accounting, to be
6 provided to Netbula, of: (1) the number of such copies in Defendants' possession, custody or
7 control; (2) where each such copy was found; (3) the identity of the individual or individuals
8 having possession, custody or control of each copy at the time it was found; and (4) a sworn
9 explanation of how each copy was obtained, duplicated or distributed, including the identity of all
10 persons involved in such activity for each such copy;

11
12 5. That Defendants' unlawful conduct as alleged herein be deemed a willful
13 violation of Plaintiff's intellectual property rights;

14
15 6. That Plaintiff be awarded its actual compensatory damages according to
16 proof for Defendants' acts of copyright infringement;

17
18 7. That Defendants be ordered to disgorge any profits or gains in Defendants'
19 possession attributable to the infringement of Plaintiff's copyrights, be they direct or indirect
20 profits;

21
22 8. That Plaintiff recover its reasonable attorneys' fees pursuant to any
23 applicable laws and/or rules;

24
25 9. That Plaintiff recover its costs of this suit, including expert witness costs,
26 pursuant to 17 U.S.C. § 505 and any other applicable laws and/or rules; and
27
28

1 10. That Plaintiff be granted such other and further relief as this Court deems
2 just and proper.

3
4 Dated: November 16, 2006

LAW OFFICES OF VONNAH M. BRILLET

5
6
7 By: *Vonnah M. Brillet*
8 VONNAH M. BRILLET
Attorneys for Plaintiff NETBULA, LLC

9 **DEMAND FOR JURY TRIAL**

10 Plaintiff NETBULA, LLC demands a jury trial in this action.

11 Dated: November 16, 2006 LAW OFFICES OF VONNAH M. BRILLET

12
13 By: *Vonnah M. Brillet*
14 VONNAH M. BRILLET
Attorneys for Plaintiff NETBULA, LLC

EXHIBIT A

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters

Register of Copyrights, United States of America

Form TX
For a Mechanical Library Work
UNITED STATES COPYRIGHT OFFICE

TX 6-211-063



EFFECTIVE DATE OF REGISTRATION

10 18 05
Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1

TITLE OF THIS WORK ▼

NETBULA POWERRPC

PREVIOUS OR ALTERNATIVE TITLES ▼

PUBLICATION AS A CONTRIBUTION If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work ▼

If published in a periodical or serial given: Volume ▼

Number ▼

Issue Date ▼

On Page ▼

2

NAME OF AUTHOR ▼

a NETBULA, LLC

DATES OF BIRTH AND DEATH

Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?
☐ Yes
☐ No

AUTHOR'S NATIONALITY OR DOMICILE

Name of Country

OR Citizen of ► U.S.A.

OR Declassified info

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

Anonymous? ☐ Yes ☒ No

Pseudonymous? ☐ Yes ☒ No

If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed. ▼

Computer program

NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH

Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?
☐ Yes
☐ No

AUTHOR'S NATIONALITY OR DOMICILE

Name of Country

OR Citizen of ►

OR Declassified info

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

Anonymous? ☐ Yes ☒ No

Pseudonymous? ☐ Yes ☒ No

If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed. ▼

NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH

Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?
☐ Yes
☐ No

AUTHOR'S NATIONALITY OR DOMICILE

Name of Country

OR Citizen of ►

OR Declassified info

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

Anonymous? ☐ Yes ☒ No

Pseudonymous? ☐ Yes ☒ No

If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed. ▼

3

YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED

1996

DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK

Month: September Day: 1 Year: 1996

U.S.A.

4

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼

NETBULA, LLC

2777 Alvarado Street, Suite C, San Leandro, CA 94577

TRANSFER If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

APPLICATION RECEIVED

OCT 18 2005

ONE DEPOSIT RECEIVED

OCT 18 2005

TWO DEPOSITS RECEIVED

FUNDS RECEIVED

MORE ON BACK ► • Complete all applicable spaces (numbers 4-6) on the reverse side of this page.
• See detailed instructions. • Sign the form at the B.

DO NOT WRITE HERE
Page 1 of 2 pages

EXAMINED BY <u>DA</u>	FORM TX
CHECKED BY _____	
<input checked="" type="checkbox"/> CORRESPONDENCE Yes	FOR COPYRIGHT OFFICE USE ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?☐ Yes ☒ No If your answer is "Yes," why is another registration being sought? (Check appropriate box.) ☒ Va. ☐ This is the first published edition of a work previously registered in unpublished form.b. ☐ This is the first application submitted by this author as copyright claimant.c. ☐ This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give: Previous Registration Number >

Year of Registration >

5

DERIVATIVE WORK OR COMPILATION

Preexisting Material Identify any preexisting work or works that this work is based on or incorporates. V

SUN RPCSRC 4.0 1984, RPC 1831, RPC 1832

a 6

See instructions
before completing
this space.

Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. V

New programming text, revisions and additional text of computer program.

b

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.

Name V

Account Number V

Sheppard Mullin Richter & Hampton LLP

DA: 92924

a 7

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name / Address / Apt / City / State / ZIP V

Edwin Komen - Sheppard Mullin Richter & Hampton LLP

1300 I Street, NW - 11th Floor East

Washington, DC 20005-3314

b

Area code and daytime telephone number > 202-218-0000

Fax number > 202-218-0020

Email >

ekomen@sheppardmullin.com

CERTIFICATION I, the undersigned, hereby certify that I am the

Check only one >

☐ author☐ other copyright claimant☐ owner of exclusive right(s)☒ authorized agent of NRTBULA, LLC

Name of author or other copyright claimant, or owner of exclusive right(s) &

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

8

Typed or printed name and date V If this application gives a date of publication in space 3, do not sign and submit it before that date.

Edwin Komen

Date > December 7, 2005

Handwritten signature (X) V

X

Certification
will be
mailed in
window
envelope to
this
address:

Name V
Edwin Komen - Sheppard Mullin Richter & Hampton LLP
Number/Street/Apt V
1300 I Street NW - 11th Floor East
City/State/ZIP V
Washington, DC 20005-3314

- Complete all necessary forms
- Sign your application in space 8

- Application fee
- Registration fee (payable to Copyright Office)
- Deposit material

101 Independence Avenue, S.E.
Washington, D.C. 20540-4222

9

*17 U.S.C. § 505(a): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 408, or in any written statement filed in connection with the application, shall be fined not more than \$2,500.

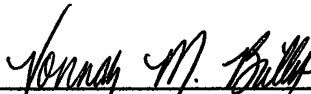
CERTIFICATION OF INTERESTED ENTITIES OR PERSONS

Pursuant to Northern District Civil L.R. 3-16, the undersigned certifies that the following listed persons, associations of persons, forms, partnerships, corporations (including parent corporations) or other entities (i) have a financial interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a non-financial interest in that subject matter or in a party that could be substantially affected by the outcome of this proceeding:

- 1) Don Yue
- 2) Netbula, LLC

Dated: November 16, 2006

LAW OFFICES OF VONNAH BRILLET



VONNAH M. BRILLET
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I declare that I am a citizen of the United States, over the age of 18 years, and not a party to the within entitled action. My business address is 2777 Alvarado Street, Suite E, San Leandro, CA 94577.

On November 17, 2006, I served a copy of the foregoing documents described as:

COMPLAINT FOR COMPENSATORY DAMAGES, DISGORGEMENT OF PROFITS, INJUNCTION RELIEF, AND ATTORNEYS' FEES AND COSTS FOR: Direct, Contributory, and Vicarious Copyright Infringement Under 17 U.S.C. Section 101 et seq.

DON YUE'S DECLARATION IN SUPPORT OF PLAINTIFF'S APPLICATION FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION AND IMPOUNDMENT

PLAINTIFF'S APPLICATION FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION AND IMPOUNDMENT

[PROPOSED] ORDER GRANTING PLAINTIFF'S APPLICATION FOR TEMPORARY RESTRAINING ORDER AND IMPOUNDING UNLICENSED NETBULA SOFTWARE; ORDER TO SHOW CAUSE

On all interested parties in said cause, by delivering a true copy as follows:

 (By Mail) I placed a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid and deposited said envelope in the United States mail in the City and county of San Leandro, California.

 X (By Hand) I sent a true copy thereof to a process serving company and caused such envelope to be delivered to the offices of the addressee.

 X (By Facsimile) I sent a true copy thereof via telephone facsimile transmission to the following number: (203) 302-7118.

Hand delivery was made to the following address:

Greenwich Capital Markets, Inc.
c/o CSC - Lawyers Incorporating Service
2216 Gateway Oaks Drive, #100
Sacramento, CA 95833

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on November 17, 2006, at San Leandro, California.


Vonnah M. Brillet